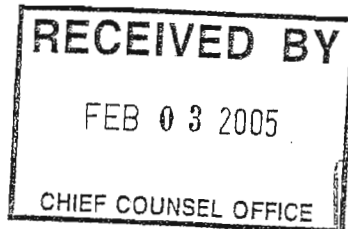
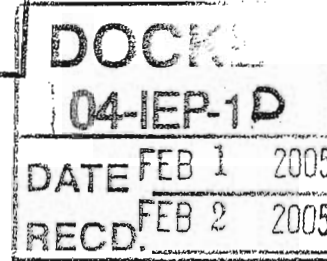




**Pacific Gas and  
Electric Company®**



Les Guliassi  
Director  
State Agency Relations



77 Beale Street, Room 2989  
San Francisco, CA 94105

*Mailing Address*  
Mail Code B29L  
Pacific Gas and Electric Company  
P.O. Box 770000  
San Francisco, CA 94177

415.973.6463  
Internal: 223.6463  
Fax: 415.973.9527  
Internet: LGG2@pge.com

February 1, 2005

California Energy Commission  
Docket Office  
Attn: Docket 04-IEP-01  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512

Dear Docket Office:

The accompanying attachments and compact disk contain PG&E's response to the California Energy Commission's request for information related to PG&E's forecast of electricity demand. This information is for the Commission staff to use in developing the 2005 Integrated Energy Policy Report. This hardcopy version of our response contains tables and accompanying narrative descriptions for requested Forms 1 through 6, with the exception of Form 1.6, which is provided by compact disk. The e-mail version of our response contains Word and Excel files for all forms with the exception of Form 1.6, which is too large to transmit electronically. Please note that, as a general matter, the forward looking information contained in this response is preliminary in nature, given that future events and regulatory decisions that have not been taken into account are likely to occur, and that these events and decisions may significantly affect the information in this response. Thus, PG&E does not purport that the information contained in this response will reflect actual future demand or sales.

We are providing an application for confidential designation for the information provided in Forms 1.3, 1.4, 1.5, and 1.6. PG&E requests that the Commission promptly grant this request in order to ensure protection of this confidential, proprietary, and competitive-sensitive trade secret information.

PG&E has developed this information after discussing the data requirements with Commission staff. We view the submittal of these demand forms as part of a process that we hope will lead to better forecasts for both PG&E and the CEC.

**APPLICATION FOR CONFIDENTIAL DESIGNATION  
(20 CCR SECTION 2025)**

***2005 INTEGRATED ENERGY POLICY REPORT***

**Docket Number 04-IEP-1**

Applicant: Pacific Gas and Electric Company ("PG&E")

Attorney for Applicant: Christopher J. Warner  
Address of Attorney: Chief Counsel, Corporate and Regulatory  
Law Department  
Pacific Gas and Electric Company  
P.O. Box 7442  
San Francisco, CA 94120-75442  
CJW5@pge.com  
(415) 973-6695  
(415) 972-5220

**1. (a) Title, data, and description of the record.**

Electric Demand Forecast forms issued by the California Energy Commission (CEC) on November 3, 2004.

**(b) Specify the part(s) of the record for which you request confidential designation.**

PG&E is requesting confidential designation for the entire contents of the Electric Demand Forecast form 1.3, 1.4, 1.5 and 1.6.

**2. State and justify the length of time the Commission should keep the record confidential.**

PG&E requests that Forms 1.3, 1.4, 1.5 and 1.6 for which it requests confidential designation herein be kept confidential for at least three years. PG&E believes that this is the length of time that is required to ensure that recent near-term forecasts do not reveal PG&E's ongoing and future procurement and competitive positions and strategies, thereby compromising PG&E's ability to secure the most favorable deals for customers and protect its business strategies and proprietary business planning information from disclosure to competitors. Because PG&E's portfolio is largely static through 2009, competitive and market sensitive information remains confidential for the near term, because of the knowledge it could impart about PG&E's future procurement needs and patterns, competitive position and business plans.

**3. (a) State the provision(s) of the Public Records Act or other law that allows the Commission to keep the record confidential, and explain why the provision(s) applies to the record.**

Forms 1.3, 1.4, 1.5 and 1.6 provide competitively and commercially sensitive business and resource planning information and trade secrets. Under the Public Records Act, Govt. Code Section 6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed. See also Govt. Code Section 6254.7(d). Evidence Code Section 1060 provides a privilege for trade secrets, which is defined in Civil Code Section 3426.1. That definition includes information, including a formula, technique, and process, that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure.

There are basically two grounds on which to justify confidential treatment of the electric demand forecasts. First, these forms contain annual or hourly demand forecast information that relatively easily allows a party to calculate PG&E's current energy supply needs on a disaggregated (monthly and hourly, bundled and direct access, and/or weather-adjusted) basis. By thus calculating PG&E's "residual net short" position, potential suppliers achieve a competitive advantage that potentially harms PG&E's customers who may end up paying higher power prices.<sup>1</sup> Second, to release this information publicly would allow market participants to have access to competitively sensitive information that would normally not be available to them in this form or format. As a matter of law and public policy, the CEC should ensure that it does not facilitate availability of such data.

Certain categories of this information relating to integrated electric resource planning peak load and demand projections already have been subject to protection from disclosure by the California Public Utilities Commission under Section 454.5 of the Public Utilities Code. That section requires the California Public Utilities Commission to maintain on a confidential basis market sensitive information related to a distribution utility's procurement plan. The data provided here is similar to the same data that has been or would likely be protected in that forum as well. It makes little sense for two state agencies receiving the same or similar information to treat it inconsistently. Moreover, differing levels of treatment for confidential information would undermine both the inter-agency cooperation agreement between the CPUC and CEC relating to long term electricity procurement planning, and the forward progress the two agencies have made over the last few years toward smooth policy coordination. See "Joint Opening Statement of CPUC President Michael Peevey and CEC Commissioner John Geesman," CPUC R. 04-04-003, April 30, 2004; "Assigned Commissioner's Ruling on Interaction Between the CPUC Long-Term Planning Process and the

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<sup>1</sup> "Residual net short" refers to the amount of energy PG&E needs to procure in the market after meeting its forecasted load with must-take power and utility retained generation.

**(b) Discuss the public interest in nondisclosure of the record. If the record contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please also state how it would be lost, the value of the information to the Applicant, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.**

The public and PG&E's customers have a compelling interest in protecting this information from disclosure to competitors or electricity suppliers who could use the information to manipulate the costs of energy supplies procured by PG&E on behalf of its customers. Because of the ease with which PG&E's net short position can be derived using this hourly or annual peak load data, protection from disclosure to third parties is required. These determinations need not be mathematically exact to cause harm; customers incur substantial risk of higher energy prices (or fewer revenues from sales) any time a potential supplier knows that a utility must buy or sell gas or electricity on behalf of its customers at any given time. PG&E believes that it would be relatively easy to perform these calculations if the data in Forms 1.3, 1.4, 1.5 or 1.6 were disclosed.

In general, PG&E's electricity procurement-related and resource planning forecasts created after January 1, 2003 when the utilities resumed their procurement responsibilities are a prime candidate for confidential treatment because such information could be used to reveal sensitive PG&E-specific data on the net short, spot purchases, spot sales, total bundled sales, and contract purchases. Similarly, if buyers know when PG&E has to sell power, PG&E could get a lower price than if the market assumed the utility had discretion over whether or not to sell. Such market knowledge is a key factor, for example, for why prices drop during spring hydro run-off periods.

The more detail that is made public concerning a utility's relative annual or hourly peak demand positions, the greater the potential for price volatility and market abuse. Suppliers could calculate adjustments to a utility's resource portfolio and be able to determine more accurately the utility's incremental needs from the market. Suppliers might then inadvertently bid up prices either through additional buying or less aggressive selling, in anticipation of significant purchases by the utility, as compared with prior periods. See Attachment 1, "Comments of Pacific Gas and Electric Company on Confidentiality Issues," California Public Utilities Commission Docket R. 01-10-024, March 1, 2004, pp. 8- 9 and Attachment A, "Declaration of James Shandalov."

Also as noted above, the public interest is served by energy agencies protecting the integrity of energy and capacity markets and information. Moreover, because the information on these forms is preliminary, subject to change, and likely to be inaccurate because of ongoing regulatory proceedings and market developments

affecting PG&E's electric and gas rates, the CEC should avoid disclosure of the information to parties, especially customers, who might inappropriately use the information for an unintended use and potentially incur harm as a result.

4. **State whether the record may be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the Applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if it is aggregated or masked, explain why.**

As explained above, in PG&E's case the Form 1.3, 1.4, 1.5 and 1.6 data could allow a party to calculate hourly or annual peak demand and procurement data on a disaggregated basis. Therefore, the peak load forecast data requested herein must not be disclosed to the public or third parties even on an aggregated basis.

Aggregation of data collected by the CEC from all California electric and gas utilities on a statewide basis would be acceptable, as long as not disaggregated by geographic region or service territory in a manner that would permit imputation on a stand-alone utility basis. Also, after the passage of at least three years, release of the data provided herein would not cause as much concern.

5. **State how the record is kept confidential by the Applicant and whether it has ever been disclosed to a person other than an employee of the Applicant. If it has, explain the circumstances under which disclosure occurred.**

As explained above, PG&E maintains access to this information on a confidential basis. It is only available by hard copy and electronically on a limited basis within certain departments and corporate affiliates, such as PG&E's parent company, that must have access to the information to conduct their procurement, regulatory, and business planning and forecasting activities. In addition, under Standard of Conduct #2 adopted by the CPUC for the utilities' electric procurement activities, PG&E employees are obligated to protect the Company's trade secrets:

2. Each utility must adopt, actively monitor, and enforce compliance with a comprehensive code of conduct for all employees engaged in the procurement process that: 1) identifies trade secrets and other confidential information; 2) specifies procedures for ensuring that such information retains its trade secret and/or confidential status [e.g., limiting access to such information to individuals with a need to know, limiting locations at which such information may be accessed, etc.]; ... (See D.02-12-074, pp. 57-58.)

PG&E has not to the best of its knowledge previously released this information to the general public or to third parties or market participants on an unlimited basis in this format or projecting out over this duration of time. While certain of the

information here or similar categories of information may have been provided in part previously under protective order or nondisclosure agreements in various state or federal regulatory filings, PG&E has not to the best of its knowledge previously publicly collated this data into this format.

For all these reasons, PG&E requests that the CEC comply with its obligation under California law to protect this information from disclosure to the public, PG&E's suppliers, or PG&E's competitors.

I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge and that I am authorized to make the application and certification on behalf of the Applicant.

Dated: February 1, 2004

Signed: 

Name: Christopher J. Warner  
Title: Chief Counsel, Corporate and Regulatory  
Pacific Gas and Electric Company

## **Attachment 1**

**Pacific Gas and Electric Company**

77 Beale Street  
San Francisco, CA  
415/973-6669  
Telecopier 415/973-9271

Edward V. Kurz  
Attorney at Law

*Mailing Address*

P.O. Box 7442  
San Francisco CA 94120

March 1, 2004



HAND DELIVERED

Docket Clerk  
Docket Office  
Public Utilities Commission  
of the State of California  
505 Van Ness Avenue, Room 2001  
San Francisco, CA 94102

Re: Order Instituting Rulemaking to Establish Policies and Cost Recovery  
Mechanisms for Generation Procurement and Renewable Resource  
Development – Rulemaking 01-10-024

Dear Docket Clerk:

Enclosed for filing in the above-captioned matter is an original and five (5) copies of  
Comments of Pacific Gas and Electric Company (U 39 E) on Confidentiality Issues.

Please file the original document, date-stamp a copy, and return the endorsed copy in  
the stamped self-addressed envelope provided for this purpose.

Very truly yours,

EDWARD V. KURZ

EVK:sl

cc: Michael R. Peevey, Assigned Commissioner  
Christine M. Walwyn, Administrative Law Judge  
All Parties in Rulemaking 01-10-024

Enclosure

**BEFORE THE  
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish  
Policies and Cost Recovery Mechanisms for  
Generation Procurement and Renewable  
Resource Development.

Rulemaking 01-10-024  
(Filed October 25, 2001)

**COMMENTS OF  
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)  
ON CONFIDENTIALITY ISSUES**

WILLIAM V. MANHEIM  
CHRISTOPHER J. WARNER  
JOHN W. BOGY  
EDWARD V. KURZ  
Law Department  
Pacific Gas and Electric Company  
Post Office Box 7442  
San Francisco, CA 94120  
Telephone: (415) 973-6669  
Fax: (415) 973-5520  
E-mail: evk1@pge.com

Attorneys for  
PACIFIC GAS AND ELECTRIC COMPANY

March 1, 2004

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Attachment A – Declaration of James Shandalov

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish  
Policies and Cost Recovery Mechanisms for  
Generation Procurement and Renewable  
Resource Development.

Rulemaking 01-10-024  
(Filed October 25, 2001)

**COMMENTS OF  
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)  
ON CONFIDENTIALITY ISSUES**

**I. INTRODUCTION**

Pursuant to Ordering Paragraph 11 of Decision 04-01-050 as modified by a February 6, 2004 letter from the Executive Director of the California Public Utilities Commission (Commission) extending the due date for filing these comments to March 1, 2004, Pacific Gas and Electric Company (PG&E) submits these comments on confidentiality issues. Specifically, Decision 04-01-050 asked for comment on three issues: (1) the Commission's felt need to re-examine the framework of confidential information adopted in an April 4, 2003 Assigned Administrative Law Judge (ALJ) Ruling (Ruling) in the context of the perceived transparency in the 2003 Integrated Resource Plan of PacifiCorp (PacifiCorp Plan); (2) how ratepayers could be harmed if the Commission makes "public all product, price, and availability information contained in the IOUs' procurement-related applications"; and (3) "whether and how California ratepayers could be harmed by having all data contained in the IOUs' quarterly procurement transaction compliance filings be submitted as public information not subject to confidentiality protections."<sup>1/</sup>

The Commission has stated that its reexamination of confidentiality issues is motivated by a concern that "the public has meaningful access to the Commission's decision-making" and by "an effort to promote the widest possible dialogue on utility planning matters in California...."<sup>2/</sup> As it proceeds with this reexamination, the Commission should bear in mind which members of the public will benefit most from the public revelation of information that is

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<sup>1/</sup> D.04-01-050, mimeo pp. 174-175.

<sup>2/</sup> Id at mimeo p. 178.

currently kept confidential and which members of the public will be harmed. A careful balancing of the competing interests of different sectors of the public is crucial to ensuring the utilities' customers are not harmed by providing data to a few groups that could adversely affect the costs the utilities' customers pay.

The existing confidentiality framework set forth in the Ruling in conjunction with existing protective orders already provides full access to all information, confidential or not, to virtually all members of the public interested in participating in this process. The only segment of the interested public whose access is somewhat restricted is composed of the suppliers and marketers who sell their energy-related products to, ultimately, California's ratepayers.

While the participation of this segment in the resource planning process is necessary, granting it full access to all information, including utility procurement strategies along with other generator-specific information, is not. The non-market participants who now have such full access are sufficiently numerous and diverse to ensure that the ratepayers are amply represented and their interests advanced. It is not clear how the ratepayers' interests would be further advanced or benefited if the firms that sell their products to those ratepayers were given access to confidential information. It is clear, however, that the interests of those firms would be advanced and benefited by access to such information.

As PG&E explains in detail below, suppliers and marketers use the information they gather about the market to obtain the optimal price for their firms. Such behavior is entirely rational in a competitive system. But the higher the prices these firms are able to obtain, the higher the costs to the ratepayers who must bear these costs in the end. When in doubt about whether to liberalize access to confidential information which principally benefits suppliers and marketers, the Commission, whose mandate includes ensuring just and reasonable rates, should err on the side of protecting the ratepayers' interests. In addition, the Commission must carry out the Legislature's intentions regarding confidentiality.

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Public Utilities Code Section 454.5(g) mandates that certain procurement-related information be kept confidential.<sup>3/</sup> The only practical resolution of the statute's mandate and the Commission's desire to make more information public is to maintain a framework like the one the Ruling adopted. In Section II of these comments, PG&E suggests possible modifications to the Ruling that should make more information public. In Sections III, IV and V, PG&E discusses how the Ruling, as modified, should apply to: (1) the PacifiCorp Plan; (2) product, price and availability applications; and (3) the utilities' quarterly procurement transaction compliance filings.

## **II. HOW THE RULING MAY BE MODIFIED TO MAKE PUBLIC MORE INFORMATION CONSISTENT WITH SECTION 454.5(g)**

PG&E appreciates the Commission's intention "to broaden the scope of information embedded in utility resource plans that can be made public,"<sup>4/</sup> especially given the Senate Energy, Utilities and Communications Committee's interest in this subject. The interest of the Commission and the Committee in making more procurement information publicly available, however, must be considered in the context of the interest the Legislature as a whole expressed in Section 454.5(g), which states the Commission "shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan . . . ."

The statute's mandatory language ("shall adopt procedures to ensure confidentiality") imposes on the Commission an affirmative duty to maintain the confidentiality of "market sensitive information," and withholds from the Commission the discretion to make public market sensitive information. This "plain meaning" of the words of the statute is strongly supported by the statute's legislative history.

As originally drafted, subdivision (g) relied on Section 583: "Under the protection of Section 583, each electrical corporation shall file quarterly with the commission its long-term

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<sup>3/</sup> All further references to statutes in these comments are to provisions of the Public Utilities Code.

<sup>4/</sup> D.04-01-050, mimeo p. 174.

forward contracts and financial contracts . . . .”<sup>5/</sup> Section 583 declares that material submitted to the Commission must be kept confidential (unless specifically required by statute to be open to public inspection), but gives the Commission the discretion to make material protected by Section 583 public “on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.”

The language of subdivision (g) that the Legislature ultimately adopted eliminated the reference to Section 583 and substituted the language of Section 454.5(g) cited above.<sup>6/</sup> This language gives the Commission the discretion to determine procedures by which certain nonmarket participants may gain access to confidential information, but the language grants the Commission no discretion to make public “market sensitive information.”

In addition, the statute’s reference to “market sensitive information” indicates that in determining whether to make public the information the utilities provide in their procurement plans, the Commission’s focus should be on whether the information is in fact “market sensitive.” In Decision 04-01-050, the test the Commission apparently articulated for keeping information confidential is “ratepayer harm,” which is not necessarily coextensive with information that is “market sensitive.” The release of market sensitive information may not result in ratepayer harm, but the language of Section 454.5(g) nevertheless requires such market sensitive information to be kept confidential. If, as a condition of confidentiality, the Commission requires utilities to demonstrate not only that the information is market sensitive, but also that the release of that information could result in ratepayer harm, the Commission would impose a requirement more rigorous than and beyond the scope of Section 454.5(g).

Given the Commission’s obligation to maintain the confidentiality of market-sensitive information and its desire to make public more procurement-related information, the Commission must have in place a framework similar to that adopted in the Ruling. In the subsections below, PG&E discusses the categories of information in the Ruling and suggests

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<sup>5/</sup> Assem. Bill No. 57 (2001-2002 Reg. Sess.) as amended April 16, 2001.

<sup>6/</sup> The language of subdivision (g) first appeared in Assem. Bill No. 57 as amended on September 14, 2001.

certain modifications designed to make public more procurement-related information consistent with the mandate of Section 454.5(g). The subheadings paraphrase the text describing the categories identified in the Ruling as modified in that Ruling. As PG&E explains, such confidential protection is certainly justified under the “market sensitive” test of Section 454.5(g), and is justified as well under the more rigorous “ratepayer harm” test.

As evidence of the market sensitive nature of the information as well as the harm ratepayers could suffer if such information were made public, PG&E provides the perspective of a market participant who has actual experience in the California energy market. James D. Shandalov, whose declaration is appended as Attachment A, was until recently a Director for Mirant Americas Energy Marketing L.P. In that position, Mr. Shandalov’s responsibilities included originating long-term supply contracts to California wholesale customers, including public utilities, municipalities and load aggregators. Mr. Shandalov discusses how suppliers could make use of the information, which the Ruling currently protects, to obtain prices higher than they may have been able to obtain if the suppliers did not have access to this market sensitive information. He also discusses the ratepayer harm that could result from the public release of such information.

**A. Long term base case procurement planning assumptions on an annual average basis (forecasts of annual average natural gas price, annual average on-peak and off-peak electricity prices, and annual average new generation resource costs) are confidential only for first three years after filing.**

This category should remain unchanged. The three-year confidentiality period is necessary because PG&E relies on its own, internally developed assumptions of natural gas prices and on- and off-peak electricity prices. As PG&E interprets the three-year confidentiality period, PG&E would make public at the time of filing the planning assumptions for years four and beyond. Thus, the only planning assumptions that would be treated as confidential would be those for years one through three. Forecasts for these early years are market sensitive because suppliers have more pricing power in the near term given the insufficient time for the construction of new generation.

Unless the planning assumptions are aggregated in a manner that adequately masks the underlying data, ratepayer harm results from the release of such information because such data provides positive evidence about what the utilities actually think future prices will be. Armed with this information, suppliers can price their products accordingly. If suppliers know what prices the utilities are predicting, the suppliers have little incentive to offer the utilities a price below those predictions, thereby foreclosing the possibility that, in the absence of this market intelligence, the suppliers may have offered a lower price. (Shandalov Declaration ¶ 8.)

Alternatively, if the suppliers know that utilities are forecasting prices lower than the market or what some suppliers are willing to offer, this knowledge may induce suppliers to sell their products in other markets rather than directly to California utilities. Additionally, suppliers may make sales in the more volatile shorter-term markets rather than longer-term forward markets. To the extent the utilities' lower, forecast prices lead to a drop in forward market price, this drop could in turn lead to accelerated retirement of older generating capacity, which could result in ratepayer harm during a time of capacity shortage. (Id.)

As for annual average new generation costs, utilities could rely on publicly available information. For example, in 2003, the California Energy Commission (CEC) published a Final Staff Report titled "Comparative Cost of California Central Station Electricity Generation Technologies," issued in Docket 02-EIP-01. This report presents generic capital, Operation and Maintenance (O&M) and financing information as well as information concerning the operating characteristics of several different kinds of generation resources, which utilities could use as a proxy for future filings.

If the Commission requires utilities to provide more detailed location-specific information, the utilities could develop such information by working with an Engineering, Procurement and Construction (EPC) firm to estimate development, construction, O&M and financing costs for several different kinds and configurations of power plants. The utilities should be permitted to maintain the confidentiality of such information for a three-year period after filing. If such internally developed information were made public, potential bidders on EPC

projects might adjust their prices accordingly, denying ratepayers the opportunity of obtaining lower, more competitive prices.

- B. Any Standard Practice Manual (SPM) input assumptions (e.g. value of avoided energy) that are otherwise confidential in the context of energy efficiency and DSM analysis, provided that the foregoing language should not independently result in making additional information confidential.**

This category should remain in effect, however, additional information may be made public by limiting the period of confidentiality protection to three years after the information is filed. This change assumes that the utilities are permitted to submit the data in aggregated form. If suppliers know how a utility values avoided energy costs on an hourly basis, for example, in a period of high demand, they will be motivated to price their products just below the utility's forecast cost. Making such information public reduces competitive pricing, thereby foregoing the potential that ratepayers will be able to obtain a fair market price. (Shandalov Declaration, ¶ 9.)

- C. Electric procurement plans, and fuel buying and hedging plans.**

The Ruling correctly determines that information concerning a utility's procurement plans, and fuel-buying and hedging plans should be kept confidential. Such information falls squarely within the protection of Section 454.5(g). Moreover, making such information public would clearly result in harm to ratepayers. For utilities, the largest buyers of capacity and energy in their respective service areas, market perceptions about the buyers' resource needs can influence market prices. For example, PG&E, whose net open position begins to increase in 2006, will become even more sensitive to the market as its market purchases become an ever-growing proportion of its resource portfolio. (Shandalov Declaration ¶ 10.) It is essential that certain information remain confidential to prevent harm to ratepayers. Suppliers should not know either the exact amount of PG&E's net open position or PG&E's detailed plan and timing to cover that position. If that information were made publicly available, suppliers could attempt to obtain higher prices as the net open position increases and older capacity retires. (Id.)

With respect to fuel buying and hedging plans, PG&E already provides information on its natural gas open positions for its owned fossil fuel generation, Qualifying Facility (QF) contract

hedging, and Department of Water Resources (DWR) contract hedging. PG&E operates only 270 MW of gas fired generation capacity at Hunters Point (163 MW) and Humboldt (53 MW and 54 MW). Each of these units is a Reliability Must-Run (RMR) unit as designated by the California Independent System Operator (ISO) and generates predictable annual energy production. PG&E must keep the fuel buying and hedging plans confidential. For hedging Short Run Avoided Cost (SRAC) energy payments (under QF contracts) and DWR dispatchable energy contract costs, the quantities of gas involved are large enough to affect, potentially, the market; therefore, the annual quantities, as well as a detailed plan for the timing of the hedges must remain confidential. Additionally, with respect to DWR contract hedging, not only would a disclosure of the short position signal how much gas PG&E would need to hedge, but it would also indicate the capacity factor at which PG&E is planning to dispatch the DWR contracts at the contract heat rate. This would further indicate PG&E's view of the gas and power markets and potentially influence bidding behavior of market participants. (Shandalov Declaration ¶ 11.)

**D. Energy, not capacity, mix (forward looking forecasts), by percentage of the utilities' own generation facilities, QF power, "old world" PPAs, DWR contracts, and "new world" utility procurement activities<sup>7/</sup> reported in MWh, not MW.**

This category must remain unchanged. PG&E agrees that public disclosure of annualized energy mix will not cause harm to ratepayers. If utilities are required to provide data for monthly periods, however, it would be less difficult for suppliers to determine the utilities' marginal costs at different times of the year, and the potential for ratepayer harm in the form of higher procurement costs would exist. For example, monthly forecast information would show seasonal trends in a utility's own energy production as well as the proportion of energy to be purchased from the market. For the summer in particular, suppliers could better determine the magnitude of the utility's market purchases and compare it with their own view of the market. With this knowledge, suppliers could inadvertently bid up prices, either through additional buying or less

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<sup>7/</sup> "New world" utility procurement activities are those that have taken place since the utilities were allowed to participate in markets outside of the basic PX and ISO markets. "Old world" procurement relates to contracts entered into before the beginning of the AB 1890 transition period. Procurement activities include sales as well as purchases of power.

aggressive selling in anticipation of significant utility purchases from the market, as compared to prior periods. (Shandalov Declaration, ¶ 12.)

**E. Peak day resource needs, and further disaggregation of energy mix, by either time period or resource type including information on procurement of natural gas to be used to generate power.**

It may be possible to make public information concerning the utilities' peak day resource needs subject to a confidentiality period of three years. Only information for the first three years after filing would be kept confidential; information for the fourth year and beyond would not be confidential. Even with such a three-year confidentiality period, however, suppliers could use the peak day forecast data for the fourth year along with actual peak load data for prior years, as filed in a utility's FERC Form 1, to interpolate the peak day needs for the years in between, including the current year. (Shandalov Declaration, ¶ 13.)

PG&E is open to further disaggregation of energy mix by resource type, particularly as it relates to renewable energy. The Commission should not require utilities to make public information concerning energy mix disaggregated by shorter time periods. The more detail that is made public concerning a utility's relative monthly positions, the greater the potential for price volatility and market abuse. Suppliers could calculate from month to month or year to year actual adjustments to a utility's resource portfolio and be able to determine more accurately the utility's incremental needs from the market. Suppliers might then inadvertently bid up prices either through additional buying or less aggressive selling, in anticipation of significant market purchases by the utility, as compared with prior periods. (Shandalov Declaration, ¶ 14.)

With respect to disaggregation of data for DWR dispatchable power contracts and "new world" Power Purchase Agreements (PPAs), the data should continue to be confidential. If suppliers know exactly how much energy a utility expects to receive pursuant to the dispatchable contracts, they can pinpoint much more exactly how much the utility will need to buy from the market, and adjust their prices accordingly. (Shandalov Declaration, ¶ 15.)

With respect to procurement of natural gas to be used for generating power, see the discussion in subsection C above.

**F. Power Purchase Agreements in effect.**

Except to the extent PPAs already are public, PPAs in effect should remain confidential because Section 454.5(g) specifically identifies PPAs as market sensitive information. Ratepayers would be harmed by the release of such information because suppliers would gain greater intelligence on how much a utility is willing to pay for various types of products. Such information would provide insight into a utility's risk management approach. Suppliers would get a better sense of what products a utility has procured to cover its net open position. The products could be standard, on-peak 16-hour blocks of energy, or 4- to 8-hour super-peak delivery profiles, or dispatchable energy and capacity, or call options (with fixed or indexed strike prices), and the like. Suppliers may be able to stack these products on top of the utility's other resources to determine from a capacity perspective the extent to which a utility has covered its net open position and how much will be left to cover in the more volatile, shorter term markets. It would allow suppliers to see which other suppliers already have agreements in place with a utility and on what terms, which would enable suppliers to test how much more the utility may be willing to pay for similar products in future solicitations by offering such products at higher prices. Suppliers would also gain intelligence on the open positions of other suppliers, specifically with respect to how much less long or how much more short a position another supplier now has as a result of contracting with a utility. (Shandalov Declaration, ¶ 16.)

Ratepayers might be exposed to higher costs if the PPAs are made public because this information may affect a utility's negotiating power on both price and contract terms for future transactions because prospective suppliers will view existing PPAs as evidence that a utility has been willing to agree to certain price and contract terms. Furthermore, if the utility is in the market to procure more of a similar product or products, there will be less supply than in the previous solicitation and may result in higher prices and less flexible contract terms because suppliers will know the utility is still short and must cover its open position. (Id.)

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**G. Aggregate data relating to renewable energy supplies, including summary of PPA information.**

At the time the Ruling was issued, parties anticipated that confidentiality issues concerning renewables would be determined in the renewables phase of the OIR. PG&E continues to believe the renewables phase is the appropriate forum. Although issues concerning confidentiality are still not resolved in that phase, PG&E believes the issues may be resolved soon. There will likely be a greater degree of disclosure with respect to renewable energy supply data than non-renewable energy supply data given the mandatory nature of the renewables program and the process for accessing Public Goods Charge monies.

**H. PPAs with affiliates.**

At the time the Ruling was issued, the current moratorium on utilities' ability to enter into PPAs with their affiliates was in effect. It was suggested that whether PPAs with affiliates should be disclosed publicly should be determined in whatever proceeding considers lifting the moratorium. The Ruling adopted this suggestion, adding:

If a proceeding does directly address the lifting of the current moratorium, the issue of disclosure of PPAs with affiliates may be addressed in that proceeding. If the moratorium is lifted without a proceeding (by passage of time, for example), or if the issue of disclosure is not addressed in the proceeding that lifts the moratorium, then PPAs with affiliates shall be publicly disclosed in their entirety. At such time as the issue becomes ripe, a motion may be brought in this proceeding or before the law and motion ALJ to seek confidential treatment of such PPAs. (Mimeo p. 12.)

PG&E believes the Ruling's resolution of this issue continues to be appropriate.

**I. Energy sales forecasts (including losses) to the wholesale market should be maintained as confidential.**

PG&E already makes public annual energy forecast information regarding "old world" wholesale transactions, as well as information that includes, in aggregate, both the DWR dispatchable contracts and "new world" wholesale transactions. As discussed in subsection E above, PG&E would continue to provide annualized, aggregated information that includes both the dispatchable DWR contracts and "new world" wholesale transactions. With only aggregated annual MWh data, it would be difficult for suppliers to discern exactly when a utility's wholesale sales and purchases occur, whether for a particular month or for on-peak versus off-peak power

and how the DWR contracts are expected to be dispatched. The Commission should not make public a further disaggregation by month or delivery period because such information has the potential to identify more clearly when utilities' net open position is greatest, enabling suppliers to raise their prices in anticipation of the higher demand. (Shandalov Declaration ¶ 17.)

**J. Peak day load and capacity needs.**

PG&E believes this category is coextensive with the category discussed in Section II.E., above. Therefore, the discussion of ratepayer harm in that section applies to this category as well.

**K. Past fuel buying and hedging information to be provided in monthly aggregate form, with a retrospective confidentiality window of two years.**

This category should remain unchanged. If this information were made available before expiration of the two-year confidentiality period, suppliers would be better equipped to determine how a utility has hedged its natural gas price risk for QF contracts and the dispatchable DWR contracts. Based on public information the ISO publishes within 45 days after the end of a calendar year regarding annual energy production at the utilities' RMR facilities, suppliers could "reverse engineer" the amount of gas utilities bought for hedging the QF energy and DWR contracts on an annual basis if the confidentiality provision for fuel buying and hedging was shorter than two years. By keeping the confidentiality period at two years, the risk of harm to ratepayers is mitigated because enough factors will have changed over two years to make the information less useful on a going-forward basis. (Shandalov Declaration ¶ 18.)

**L. Expired PPAs of greater than six months duration, which expired two years before filing a Long Term Plan, will be made public unless the release would be inconsistent with the confidentiality provisions in the PPA.**

This category should remain unchanged. Public release of this information sooner than the two-year period specified would produce ratepayer harm for the reasons discussed in Section II.F., above.

**III. THE PACIFICORP PLAN**

In Decision 04-01-050, the Commission describes the PacificCorp Plan "as a possible model of transparency" and observes that the "extent of information made public in the

PacifiCorp Plan appears to exceed the guidelines on confidentiality adopted in the April 4 Ruling...."<sup>8/</sup> Certainly in terms of volume, the PacifiCorp Plan's 412 pages of single-spaced text and graphs are impressive. PG&E understands, however, that the Plan is the result of at least a year of effort. Given the schedule contemplated in this proceeding, California utilities cannot reasonably be expected to produce a plan of similar magnitude.

The constraints the schedule in this proceeding impose, however, do not deprive interested parties of access to information about California utilities analogous to much of the information PacifiCorp includes in its Plan. For example, in Chapter 2 of its Plan, PacifiCorp provides a general description of its service territory, supply resources (with references to Appendix C, Tables C.14 and C.15), wholesale sales and purchases (with references to Appendix C, Tables C.1, C.2 and C.3) and transmission-related information. In its FERC Form 1 filings, PG&E provides similarly detailed generation information, including annual production in kWh, fixed and variable costs, full load heat rates, date of first commercial operation and licensing and the like.

As to the extent to which the PacifiCorp Plan contains information that the Ruling would keep confidential, PG&E does not believe there are significant disparities between the information in the PacifiCorp Plan and that which the utilities would need to make public pursuant to the Ruling's framework. The differences are attributable primarily to the fact that California utilities must rely on the market to fill their net open positions to a much greater extent than PacifiCorp must.

PacifiCorp's service area covers portions of six states listed in order of highest to lowest retail load: Utah, Oregon, Wyoming, Washington, Idaho, and California. It comprises two control areas that are transmission constrained between East and West. Although large by geographic standards and subject to the jurisdiction of five public utilities commissions, in terms of retail load, PacifiCorp is smaller than PG&E and Southern California Edison Company. PG&E, in contrast, is part of a single control area operated by the ISO. PG&E's service territory

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<sup>8/</sup> Decision 04-01-050, mimeo p. 174.

is all in northern and central California, and PG&E is subject to the jurisdiction of this Commission. These differences in service territory and regulatory jurisdiction highlight an important difference in the two companies.

The PacifiCorp's Plan provides detailed supply and demand information only on a system basis, including some delineation between East and West; therefore, with respect to each individual service territory in a given state, PacifiCorp's Plan is not as forthcoming with public information as it may appear. Were PG&E to provide similar information for its service territory, the disclosure would be harmful because suppliers would have better intelligence on a large, concentrated portion of the market and be able to use the information to price their products.

PacifiCorp's utility-owned generation produces 72 percent of its energy needs. Moreover, in a recent news release, PacifiCorp announced its intention to build a 525 MW powerplant in Utah, thereby further reducing its need to contract with suppliers to serve its customers. PG&E by contrast is able to supply only 43 percent of its energy requirements using its utility-retained generation. In addition, PG&E serves a substantial portion of its load using energy from QFs and from the contracts the Commission allocated to it from DWR. With the QF contracts, PG&E must hedge the natural gas price risk inherent in the SRAC energy price; with the DWR contracts, some are dispatchable and also subject to natural gas price risk. PacifiCorp does not have a direct analogue to this form of natural gas price risk.

PacifiCorp uses coal as a fuel source in 77 percent of its utility-owned power plants and therefore is much less reliant on natural gas as a fuel source than California utilities are. Given the volatility in the natural gas commodity market and recent evidence that some natural gas suppliers may resort to sharp practices in marketing their product, there is a greater need to keep gas-related market sensitive information confidential in California than in PacifiCorp's service territory.

PacifiCorp concludes in its Plan that construction of significant new physical capacity is necessary for it to reliably serve load and meet reserve requirements in its service territory. The

Plan demonstrates a sense of urgency in bringing new capacity to the market. Such new capacity would necessarily be a cost-based investment, either by PacifiCorp or a third party.

In PG&E's case after implementation of additional energy efficiency and DSM programs, as well as purchase of power from renewable and QF suppliers, PG&E's remaining net open position for the next five years will likely be supplied for the most part with power purchased from the market. Market prices for power, unlike generation capacity, are not necessarily cost-based, but are a function of supply and demand and are more volatile in the near term based on factors such as the amount of power available from hydroelectric generation, the number of major forced outages of power plants and transmission lines, unusually hot weather for extended periods of time and the like. Because of its need for purchased power during this period, in contrast to new generation capacity, PG&E is more sensitive to market forces and must necessarily keep more information confidential than PacifiCorp does. To the extent the PacifiCorp Plan makes public information beyond the bounds of the Ruling's confidentiality protections, California's ratepayers would be harmed by release of the same information coming from a single utility operating in just one jurisdiction for the same reasons discussed in Section II, above.

#### **IV. PRODUCT, PRICE, AND AVAILABILITY INFORMATION IN UTILITY PROCUREMENT-RELATED APPLICATIONS.**

PG&E understands the reference to "product, price, and availability" in Decision 04-01-050 to refer to transactions for products such as capacity or energy.<sup>9/</sup> Although the "price" seems clear, what was intended by "availability" is not. It could refer to the nature of the commitment (e.g., firm rather than as-available) or the term of the commitment or seasonality (e.g., 98 percent in the summer and 92 percent in the winter) or all of the above. In any case, for many, if not all, of the reasons already discussed above, ratepayers would suffer financial harm if the Commission were to make public the foregoing information any sooner than two years after a given transaction or power purchase agreement expires.<sup>10/</sup>

<sup>9/</sup> D.04-01-050, mimeo pp. 175-176.

<sup>10/</sup> A "procurement-related application" as referenced in Decision 04-01-050 would be subject to the confidentiality mandate of Section 454.5(g).

As an initial matter, for proposed PPAs, suppliers would object to making the information public because it exposes to some extent their open position especially if the proposed transaction is not executed.<sup>11/</sup> Particularly for capacity based products, such as dispatchable physical generation or tolling agreements, the market would see that a particular supplier was prepared to sell a certain quantity of product at a certain price. If that sale was not executed, the market would then know that this particular supplier has a remaining long position and that this supplier would be a seller in the shorter-term markets. Such a scenario could actually lead to lower prices in the shorter-term markets because of the greater selling pressure – a scenario suppliers wish to avoid. (Shandalov Declaration, ¶ 19.)

From the utility's perspective, if the utility still has short position after making public the terms of proposed or recently executed PPAs, then future solicitations may lead to higher-priced offers. Presumably, the utility in its initial solicitation would have attempted to buy most, if not all, of the lowest-cost products that fit its portfolio needs. To the extent the utility needs to conduct a further solicitation for additional, similar supplies, however, suppliers would have no incentive to offer pricing lower than what the utility has already paid (i.e., if the need still exists, prices would necessarily be equal to or higher than in the initial solicitation). Therefore, by making the information publicly available, ratepayers would be exposed to higher procurement costs. The more information that is made available, the more market intelligence suppliers have. If the information is not made public immediately upon proposal or execution, future solicitations will yield the most competitive prices. Therefore, the Commission should permit a confidentiality period of two years after a PPA has expired.

Aside from product, price, and availability terms, if a supplier knows who its competition is, this market intelligence can affect its offer in response to a solicitation. For example, if Supplier 1 knows that Supplier 2, who has a certain amount of generating capacity, has already consummated capacity transactions with a particular utility, then Supplier 1 knows that in future

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<sup>11/</sup> To the extent suppliers submit to utilities market sensitive information related to the utilities' procurement plans, Section 454.5(g) requires the Commission to keep such information confidential. The statute does not restrict the confidentiality protection to utility-generated information.

solicitations, there will likely be less competition from Supplier 2 for the sale of a capacity product. Supplier 1 may then attempt to obtain a higher price depending on the perceived ability to consummate the transaction at the higher price. (Shandalov Declaration, ¶ 19.)

With respect to applications for utility projects, potential suppliers certainly want to know the prices a utility is prepared to pay for new capacity. To the extent there is a competitive solicitation for new capacity, it may be unrealistic to think that the full contract would not eventually have to be disclosed publicly (such as upon execution), but, as with a PPA, a supplier will not want the terms disclosed, except to a select group of non-market participants, during the proposal and evaluation phase at the Commission. (Shandalov Declaration, ¶ 20.)

Seeing all the details of a completed transaction might set a floor for future projects. Alternatively, public release of these details could lead to future offers that approximate the amount that has been publicly disclosed even though, in absence of this market intelligence, the utility might obtain a lower price. Either of these outcomes harms ratepayers by imposing higher costs.

#### **V. INFORMATION PROVIDED IN UTILITY QUARTERLY PROCUREMENT TRANSACTION COMPLIANCE FILINGS**

Currently, PG&E requests confidentiality protection for its quarterly procurement compliance filings using the Ruling's confidentiality framework. Ratepayers would suffer financial harm by release of information beyond the protections, as modified, discussed in Section II, above, for the same reasons enumerated in that section.

In addition, if the exact details (product, price, quantities) of the bilateral transactions as well as ISO purchase and sale transactions were made public upon filing of the quarterly transaction reports, suppliers could use that information to determine more exactly the utilities' net open positions on a monthly basis. With this knowledge of actual quantities and prices utilities are paying for natural gas and electricity, suppliers might also be able to determine the dispatch of the utilities' DWR contracts. Knowing how the utilities supply their net open position in a given month or quarter enables suppliers to predict much more precisely the utilities' needs in similar quarters in future years. To do this, suppliers would first evaluate the

magnitude of transactions for the past quarter. Then suppliers would adjust for load growth, adjust for expiration of DWR contracts, adjust for stated energy efficiency and DSM goals, adjust for procurement of renewable energy in compliance with the RPS, and be able to make a forecast of the utilities' net open position for the same quarter of the following year. (Shandalov Declaration, ¶ 21.)

Given the long lead-time required for new capacity to enter the market, if the net open positions become large enough, suppliers could attempt to obtain higher prices for existing capacity and energy in the near term. Assuming that the utilities' net open positions increase over time, thereby increasing their reliance on contracts from the market, the utilities would be commensurately less able to secure lower prices for ratepayers because suppliers know the extent and trend of the increase of the utilities' net short position. (Id.)

## **VI. CONCLUSION**

For all the foregoing reasons, the Commission should not alter the Ruling's confidentiality framework beyond the suggested changes PG&E discusses above.

Respectfully submitted,

WILLIAM V. MANHEIM  
CHRISTOPHER J. WARNER  
JOHN W. BOGY  
EDWARD V. KURZ

By: 

EDWARD V. KURZ

Law Department  
Pacific Gas and Electric Company  
Post Office Box 7442  
San Francisco, CA 94120  
Telephone: (415) 973-6669  
Fax: (415) 973-5520  
E-mail: evk1@pge.com

March 1, 2004

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish  
Policies and Cost Recovery Mechanisms for  
Generation Procurement and Renewable  
Resource Development.

Rulemaking 01-10-024  
(Filed October 25, 2001)

**DECLARATION OF  
JAMES D. SHANDALOV**

I, James D. Shandalov, declare:

1. I am currently an independent consultant specializing in commercial and regulatory issues in the Western energy markets. At the request of Pacific Gas and Electric Company (PG&E), I am making this declaration to explain how suppliers of electricity to the California energy market gather market intelligence as part of their efforts to sell their products at the optimal prices for their firms. In particular, I will discuss certain categories of information that are currently kept confidential in accordance with an April 4, 2003 Assigned Commissioner's Ruling (Ruling) in the above-captioned docket as well as the proposal to make public all product, price and availability information in a utility's procurement-related applications. I will also comment on the confidentiality of information contained in the utilities' quarterly transaction reports. I will explain how suppliers could make use of such market sensitive information to obtain prices higher than they may have been able to obtain if the suppliers did not have access to this market sensitive information. The suppliers' possession of this market sensitive information could result in ratepayer harm in the form of higher procurement costs. In this market, as in any other rational market, sellers seek to obtain the highest possible prices for their products, and buyers seek the lowest possible prices.

2. I have 16 years of experience in the energy industry, including 10 years in the regulated utility business and 6 years in the merchant energy sector. My merchant experience includes trading, origination, and development. Prior to my current employment, I held the position of Director for Mirant Americas Energy Marketing LP until November 2003. In that

**Attachment A**

position, my responsibilities included originating long-term supply contracts to California wholesale customers, including public utilities, municipalities, and load aggregators. I have also held positions at Southern Company and Georgia Power Company. A copy of my resume is attached to this declaration. My background and experience give me knowledge of how suppliers could make use of market sensitive information and other market intelligence to obtain the highest possible prices for their products. I am by no means suggesting that the behavior of marketers and suppliers I describe in this declaration is unethical. The attempt to collect as much information about the market as possible, in a perfectly legal manner, is simply rational behavior on the part of participants in a competitive market.

3. Suppliers develop their view of the market from a variety of information sources. The more information they can obtain, the more refined their market view. This market view determines asset hedging activities, asset development and retirement strategies, and speculative trading strategies. While suppliers take some information at face value and use it to make short-term trading decisions, suppliers also gather other information and further model it to gain a longer-term perspective on the market. The information suppliers seek includes forward curves, loads, the magnitude of competitors' and customers' open positions, the status of capacity additions and retirements, status of major transmission projects, major policy issues that drive resource decisions, short and long-term weather forecasts and trends, the outlook for hydro production relative to snowpack and fish programs, generator outages, transmission maintenance, transaction data, and the like. The sources for such information include documents on file with this Commission, Western Electricity Coordinating Council (WECC) studies and assessments, California Energy Commission (CEC) studies and plant licensing/construction status reports, California Independent System Operator (CA ISO) seasonal assessments and market design proceedings, legislative actions, Federal Energy Regulatory Energy Commission (FERC) filings (Reliability Must-Run (RMR), Electronic Quarterly Reports (EQR)), company annual reports, trade publications and news services, transactions with customers, and the like.

4. Suppliers have access to a great deal of information regarding the markets.

Because the California utilities are so dependent on the markets to cover their net open position, particularly as the net open positions increase over time, those net open positions and the utilities' specific plans for covering is intelligence suppliers would find especially useful because suppliers could better anticipate the timing of buying activity. Suppliers could respond by either buying additional supplies or selling existing supplies less aggressively in anticipation of utility purchases.

5. Based on publicly available information, I understand that PG&E derives its electricity net open position by measuring the difference between its retail load obligation and the ability of its existing resource portfolio to meet that load obligation while also meeting state and regional capacity reserve requirements. For natural gas, the net open position consists of three components: (1) the fuel required to operate utility-retained generation, (2) hedging activities associated with managing Short Run Avoided Cost (SRAC) electricity price risk in Qualifying Facility (QF) contracts, and (3) hedging activities associated with managing electricity price risk in the Department of Water Resources (DWR) dispatchable contracts.

6. Based on publicly available information, I understand that when coupled with Commission policy directives on energy efficiency, Demand Side Management (DSM) programs, compliance with the California Renewable Portfolio Standard (RPS), new Distributed Generation (DG), and purchases from Qualifying Facilities, in addition to managing a substantial position in DWR-allocated contracts, PG&E's remaining energy and capacity needs for the next five years must be acquired through market contracts.

7. In the paragraphs that follow, I will discuss why I, as a marketer or supplier to utilities, would consider the information the Ruling protects as market sensitive information and how I or other market participants could use that information to obtain the optimal price for products from the utilities.

8. As a marketer, I would regard the utilities' own, internally developed assumptions of natural gas prices and on- and off-peak electricity prices as market sensitive

information because such data provides positive evidence about what the utilities actually think future prices will be. If I have definite knowledge as to what a utility thinks the prices in the future may be, then barring a major market move, I would have little incentive to offer the utilities a price below the prices the utility is predicting. On the other hand, if I did not have access to this market sensitive information, my market intelligence would be much less perfect, which might induce me to offer a lower price in order to secure the contract with the utility. By the same token, if I know that utilities are forecasting prices lower than what I am prepared to offer, I have an incentive to look elsewhere for a more favorable market for my products. Additionally, I may make sales in the more volatile shorter-term markets rather than longer-term forward markets. To the extent the utilities' lower forecast prices lead to a drop in forward market prices, this could inadvertently lead to the accelerated retirement of older generating capacity, which could result in ratepayer harm during a time of capacity shortage.

9. From a marketer's perspective, how a utility values avoided energy costs on an hourly basis is market sensitive information. I could use this knowledge in a period of high demand to price my products just below the utility's forecast cost. On the other hand, if the only intelligence I have in this area comes from aggregated data, it is more difficult to match my pricing with what the utility might be predicting because I do not know, specifically, the avoided cost in a given hour.

10. In California, the utilities are the largest buyers of capacity and energy in their respective service areas; the magnitude of resource needs can influence how a marketer will price its products. For example, I believe that PG&E, whose net open position begins to increase in 2006, will become even more sensitive to the market, as its market purchases become an ever-growing proportion of its resource portfolio. An increase in net open position from year to year will necessarily increase the amount of trading and contracting activity in the market. Suppliers are focused on profit maximization, so the more that they know about the exact net open position of a utility and its plans to cover that position, the greater the potential that the market will inadvertently bid up prices, either through additional buying or less aggressive selling, in

anticipation of buying activity by the utilities. If I, as a marketer, know either the exact amount of PG&E's net open position or PG&E's detailed plan and timing to cover that position, I could attempt to use this market sensitive information to obtain higher prices as the net open position increases and older capacity retires.

11. As a marketer, I would consider a utility's fuel hedging plan for managing electricity price risk in QF and DWR dispatchable contracts as market sensitive information. The quantity and timing of the hedges have the potential to affect market prices. To the extent suppliers know such details, there is the potential of harm to ratepayers resulting from an inadvertent bidding up of market prices for natural gas, either through additional buying or less aggressive selling, in anticipation of large transaction activity by the utility. Additionally, with respect to DWR contract hedging, not only would a disclosure of the short position signal how much gas the utility would need to hedge, but it would also indicate the capacity factor at which the utility is planning to dispatch the DWR contracts at the contract heat rate. This disclosure would further indicate the utility's view of the gas and power markets, including how much more or less energy the utility would need to buy in the market, and potentially influence bidding behavior of market participants.

12. As a marketer, I would not benefit much from the possession of a utility's annualized energy mix by percentage. On the other hand, I would consider such data for monthly periods somewhat more useful, market sensitive information because it would make it less difficult to determine a utility's marginal costs at different times of the year. For example, monthly forecast information would show seasonal trends in a utility's own energy production as well as the proportion of energy to be purchased from the market. For the summer in particular, I could better determine the magnitude of the utility's market purchases and compare it with my own view of the market. Given this type of information, the market could inadvertently bid up prices, either through additional buying or less aggressive selling, in anticipation of significant utility purchases from the market, compared to prior periods.

13. Peak day resource needs is an important piece of market intelligence. Ideally I would want access to all such market sensitive information, but even if access to such information were subject to confidentiality for the first three years' data as PG&E has proposed, I could still use the peak day forecast data for the fourth year along with actual peak load data for prior years, as filed in a utility's FERC Form 1, to interpolate the peak day needs for the years in between, including the current year.

14. Concerning a utility's energy mix disaggregated by periods shorter than a year, if I had access to that information, which PG&E proposes to keep confidential, I could use that market sensitive information to calculate from month to month or year to year actual adjustments to a utility's resource portfolio; I'd then be able to determine more accurately the utility's incremental needs from the market. With this type of information the market might inadvertently bid up prices, either through additional buying or less aggressive selling, in anticipation of significant market purchases by the utility, as compared with prior periods.

15. As a marketer, I would consider disaggregated data for a utility's DWR dispatchable power contracts and "new world" Power Purchase Agreements (PPAs) market sensitive information. If I know exactly how much energy a utility expects to receive pursuant to the dispatchable contracts, I can pinpoint much more exactly how much the utility will need to buy from the market and adjust my prices accordingly.

16. From a marketer's perspective access to the PPAs a utility has would be extremely valuable market intelligence. Such market sensitive information would provide insight into a utility's risk management approach. This information would give me a better sense of which products a utility has procured to cover its net open position. The products could be standard, on-peak 16-hour blocks of energy, or 4- to 8-hour super-peak delivery profiles, or dispatchable energy and capacity, or call options (with fixed or indexed strike prices), and the like. I would attempt to stack these products on top of the utility's other resources to determine from a capacity perspective the extent to which a utility has covered its net open position and how much will be left to cover in the more volatile, shorter term markets. Knowledge of the

terms and conditions of PPAs in effect would also enable me to see which other suppliers already have agreements in place and on what terms, which would enable me to test how much more the utility may be willing to pay for similar products in future solicitations by offering such products at higher prices. I would also gain intelligence on the open positions of other suppliers, specifically with respect to how much less long or how much more short a position another supplier now has as a result of contracting with a utility. If a utility's current PPAs are made public I believe this market sensitive information would weaken a utility's negotiating power with respect to both price and contract terms for future transactions. I would use this information as evidence that a utility has been willing to agree to certain price and contract terms. Possession of such information would make me more reluctant to agree on terms and conditions more favorable to the utility in my negotiations with that utility. Furthermore, if the utility is in the market to procure more of a similar product or products, there will be less supply than in the previous solicitation and this may give me an opportunity to obtain higher prices and less flexible contract terms because I know the utility is still short and must cover its open position.

17. Information concerning a utility's energy sales forecasts to the wholesale market disaggregated by month or delivery period is valuable, market sensitive information because such information has the potential to identify more clearly when utilities' net open position is greatest, allowing suppliers to inadvertently bid up prices, either through additional buying or less aggressive selling, in anticipation of significant utility purchases from the market, compared to prior periods. However, such information, if aggregated on an annual basis, is much less useful.

18. As a marketer, I would regard a utility's past fuel buying and hedging information to be market sensitive because possession of such information would enable me to determine better how a utility has hedged its natural gas price risk for the QF contracts and dispatchable DWR contracts. Based on public information the ISO publishes within 45 days after the end of a calendar year regarding annual energy production at the utilities' RMR facilities, I could "reverse engineer" the amount of gas utilities bought for hedging the QF and DWR contracts on an annual basis if the confidentiality provision for fuel buying and hedging was shorter than two years. The

older and more "stale" this information is, the less valuable it becomes to a marketer because enough factors will have changed over time to make the information less useful on a going-forward basis.

19. PG&E has also asked me to comment on the Commission's proposal to make public all product, price and availability information in a utility's procurement-related applications. As a marketer I would object to making the information public because it exposes to some extent my own open position particularly if the proposed transaction is not executed. Particularly for capacity-based products, such as dispatchable physical generation or tolling agreements, my competitors would see that I was prepared to transact a certain quantity of product at a certain price. If that transaction was not executed, my competitors would then know that I have a remaining long position and that I will be a seller in the shorter-term markets. Such a scenario could actually lead to lower prices in the shorter-term markets because of the greater selling pressure, which is a situation I as a marketer would wish to avoid. Thus this information is market sensitive from a supplier's perspective. From the utility's perspective, if the utility still has short position after making public the terms of proposed or recently executed PPAs, then in future solicitations I would regard this as an opportunity to obtain higher prices. Presumably, the utility in its initial solicitation would have attempted to buy most, if not all, of the lowest-cost products that fit its portfolio needs. To the extent the utility needs to conduct a further solicitation for additional, similar supplies, however, I would have little incentive to offer pricing lower than what the utility has already paid. Aside from product, price, and availability terms, if I know who my competition is, this market intelligence can affect how I formulate my offer in response to a solicitation. For example, if I know that my competitor, who has a certain amount of generating capacity, has already consummated capacity transactions with a particular utility, then I know that in future solicitations, there will likely be less capacity available from that competitor. I would see this an opportunity to attempt to obtain a higher price depending on whether I thought I might get a contract at the higher price, based on other market intelligence I may have.

20. With respect to applications for utility projects, potential suppliers certainly want to know the prices a utility is prepared to pay for new capacity. This too is market sensitive information. To the extent there is a competitive solicitation for new capacity, it may be unrealistic to think that the full contract would not eventually have to be disclosed publicly (such as upon execution), but, as with a PPA, as a supplier I would not want the terms disclosed, except to a select group of non-market participants, during the proposal and evaluation phase at the Commission.

21. Finally, with respect to information the utilities now provide in their quarterly transaction reports, I would find all such information very valuable market intelligence of a market sensitive nature. If the exact details (product, price, quantities) of the bilateral transactions, as well as ISO purchase and sale transactions, were made available to me upon filing of the quarterly transaction reports, I could use that information to determine more exactly the utilities' net open positions on a monthly basis. With this knowledge of actual quantities and prices utilities are paying for natural gas and electricity, I might also be able to determine the dispatch of the utilities' DWR contracts. Knowing how the utilities supply their net open position in a given month or quarter would enable me to predict much more precisely the utilities' needs in similar quarters in future years. To do this, I would first evaluate the magnitude of transactions for the past quarter. Then I would adjust for load growth, adjust for expiration of DWR contracts, adjust for stated energy efficiency and DSM goals, adjust for procurement of renewable energy in compliance with the RPS, and be able to make a forecast of the utilities' net open position for the same quarter of the following year. Given the long lead-time required for new capacity to enter the market, if I anticipated significant buying activity by the utilities, I would have an incentive to attempt to obtain higher prices for existing capacity and energy in the near term. Assuming that the utilities' net open positions increase over time, thereby increasing their reliance on contracts from the market, I would assume utilities would be commensurately less able to secure lower prices for ratepayers because the market would know the extent and trend of the increase of the utilities' net short position.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on MARCH 1<sup>ST</sup> 2004, at Danville, California.

  
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JAMES D. SHANDALOV

## **James D. (Jim) Shandalov**

688 Adobe Drive  
Danville, CA 94526  
925-552-6396 Home  
770-329-8632 Mobile  
jim.shandalov@sbcglobal.net

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### **PROFILE**

Offering a 16-year history of proven performance in origination of energy supply contracts, generation development, asset optimization, power trading, asset acquisition, energy policy, project management, and technical design. Strengths include: breadth of experience, commercial sense, contract negotiation, and communication skills.

### **PROFESSIONAL EXPERIENCE**

#### **MIRANT CORPORATION, Walnut Creek, CA**

2000-2003

*Director, Marketing and Development (2001-2003)*

*Project Director (2000-2001)*

- Originated long term supply contracts to California wholesale customers – public utilities, municipalities, and load aggregators. Successfully closed sales transactions under difficult credit environment leading up to Chapter 11 filing. Participated in negotiations on tolling agreement as seller. Involved in settlement discussions with state, FERC, and customers regarding litigation related to California energy crisis. Active in state regulatory and legislative issues pertaining to energy policy, including utility procurement, direct access, and renewable energy. Familiar with Reliability Must-Run contracts with California ISO.
- Directed marketing and development team for origination of power, gas, and emissions credits deals, as well as new generation development in California. Successfully closed sales transactions in each commodity. Negotiated tolling deal as buyer. Delivered presentations at two energy conferences.
- Developed sites for natural gas fired combined cycle projects in California. Directed multi-disciplinary due diligence teams, prepared bids, and negotiated purchase of potential acquisitions; targets included companies, assets, development projects, and energy supply contracts. Team members included technical, environmental, legal, finance, trading, and structuring.

#### **SOUTHERN COMPANY ENERGY MARKETING, LP, Atlanta, GA**

1998-2000

Southern Energy, Inc. and its subsidiaries were spun off as Mirant Corporation in September 2000

*Manager, Power Logistics (1999-2000)*

*Manager, Transmission (1998-1999)*

*Hourly Trader (1998)*

- Managed hourly trading, pre-scheduling, and real time power operations in WECC and supervised support team. Assisted in asset optimization of Mirant's 3000 MW Bay Area portfolio. Traded hourly power in California and WECC markets. Established and hedged positions in Firm Transmission Rights. Developed new relationships and physical positions that led to valuable opportunities.
- Managed East Transmission Desk and support team. Responsible for physical transmission of power on daily basis and for forward hedging with transmission in PJM and Midwest markets. Helped traders to complete deals involving transmission. Provided guidance and training to team.
- Traded hourly power in East Region. Helped establish Southern Energy as an active market participant. Made transmission reservations on OASIS and created energy tags for hourly deals. Handled and resolved real time problems with prescheduled power.

**SOUTHERN COMPANY SERVICES, INC.,** Birmingham, AL and Atlanta, GA

1996-1998

*Project Engineer*

- Selected to first class of Pipeline Leadership Development Program to do 4 job rotations at Southern Company subsidiaries. Completed courses in Emerging Competitive Energy Markets, Financial Analysis, Electric Utility Cost Structure, and Strategic Negotiations.
- **Southern Company Energy Marketing** - Coordinated load forecasts, power schedules, and financial settlements in SCEM's participation in the Pennsylvania Retail Pilot. Scheduled power in PJM.
- **Southern Company Services' Financial Planning and Analysis** - Assisted with developing criteria for investment in generation and distribution assets. Analyzed Georgia Power's freight logistics program.
- **Southern Development and Investment Group's Energy Services** - Performed financial modeling and risk analysis. Key part of due diligence team for a proposed energy services company acquisition.
- **Southern Company Services' Transmission Planning and Operations** - Implemented FERC Orders 888 and 889. Assisted in designing rates for transmission and ancillary services, and in the related FERC filings. Developed financial models to measure cost shifting between the operating companies.

**GEORGIA POWER COMPANY (SOUTHERN COMPANY),** Atlanta, GA

1987-1996

*Project Engineer (1993-1996)*

*Design Engineer (1991-1993)*

*Cooperative Education Program (1987-1991)*

- Assisted project manager in managing multiple capital transmission line and substation projects. Functional areas included land acquisition, procurement, engineering, environmental, construction, and commissioning. Developed project strategies and coordinated schedules and budgets. Completed job rotation in Transmission Construction. Served as Chairman of Georgia Power Engineering Association. Completed Leadership Development program.
- Prepared cost estimates and performed engineering design for electric substation projects. Designed physical portion of Georgia Power's first "Southern Company standard" substation.
- Worked alternate quarters while earning undergraduate degree in college. Completed 5 quarters in Substation Design and 2 quarters in the Research Center.

## EDUCATION

**Master of Business Administration,** Georgia State University, Atlanta, Georgia, 1995

**Bachelor of Electrical Engineering,** Georgia Institute of Technology, Atlanta, Georgia, 1991

## **PROOF OF SERVICE BY MAIL**

I, the undersigned, state that I am a citizen of the United States and employed in the City and County of San Francisco; I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, 77 Beale Street, San Francisco, California 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On March 1, 2004, I caused to be served a true copy of:

**COMMENTS OF  
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)  
ON CONFIDENTIALITY ISSUES**

by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, on March 1, 2004, enclosed in a sealed envelope, with postage fully prepaid, addressed to:

All Parties in Rulemaking 01-10-024

In addition, an electronic version of the above-referenced Comments was transmitted to all parties providing an e-mail address in Rulemaking 01-10-024.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 1, 2004.

  
STEPHANIE LOUIE